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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all

others similarly situated,

CLASS ACTION

Plaintiff,

**COMPLAINT FOR VIOLATIONS
OF:**

VS.

OneRent, Inc. and DOES 1 through 10,
inclusive,

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

Defendant.

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of ONERENT, INC. (“Defendant”), in
5 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
6 telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227
7 *et seq.* (“TCPA”) and related regulations.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
10 a California corporation with its principle place of business also in California, seeks
11 relief on behalf of a Class, which will result in at least one class member belonging
12 to a different state than that of Defendant, a California Company. Plaintiff also
13 seeks up to \$1,500.00 in damages for each call; in violation of the TCPA, which,
14 when aggregated among a proposed class in the thousands, exceeds the
15 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
16 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
17 (“CAFA”) are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Northern
19 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant do
20 business within the State of California and Plaintiff resides within the County of
21 Alameda.

22 **PARTIES**

23 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
24 is a rooting and plumbing business in Emeryville, California and is a “person” as
25 defined by 47 U.S.C. § 153 (39).

26 5. Defendant, ONERENT, INC., is an appliance rental and leasing
27 services company and is a “person” as defined by 47 U.S.C. § 153 (39).

28 6. The above-named Defendant, and their subsidiaries and agents, are

collectively referred to as “Defendant.” The true names and capacities of the Defendant sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendant designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendant. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendant.

FACTUAL ALLEGATIONS

8. On or around March 2019, Defendant contacted Plaintiff on Plaintiff’s cellular telephone number ending in -6147 in an attempt to solicit Plaintiff to purchase Defendant’s services.

9. Defendant used an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

10. Defendant placed automated calls and in addition, sent automated text messages with an SMS blasting device.

11. Defendant contacted or attempted to contact Plaintiff from telephone number (858)433-2147 belonging to Defendant

12. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13. Defendant’s calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls

1 pursuant to 47 U.S.C. § 227(b)(1).

2 14. During all relevant times, Defendant did not possess Plaintiff's "prior
3 express consent" to receive calls using an automatic telephone dialing system or an
4 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
5 227(b)(1)(A).

6 15. Defendant placed multiple calls soliciting its business to Plaintiff on
7 its cellular telephones beginning in or around March 2019.

8 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

10 17. Plaintiff received numerous solicitation calls from Defendant within a
11 12-month period.

12 18. Plaintiff never granted Defendant any prior express consent nor was
13 any established business relationship with Defendant in existence as defined under
14 16 C.F.R. 310.4(b)(1)(iii)(B).

15 19. Upon information and belief and based on Plaintiff's experiences of
16 being called by Defendant after requesting they stop calling, and at all relevant
17 times, Defendant failed to establish and implement reasonable practices and
18 procedures to effectively prevent telephone solicitations in violation of the
19 regulations prescribed under 47 U.S.C. § 227(c)(5).

20 20. On or about March 2019, Plaintiff received a text message from
21 Defendant on his cellular telephone, number ending in -6147.

22 21. During this time, Defendant began to use Plaintiff's cellular telephone
23 for the purpose of sending Plaintiff spam advertisements and/or promotional offers,
24 via text messages, including a text message sent to and received by Plaintiff on or
25 about March 2019.

26 22. These text messages placed to Plaintiff's cellular telephone were
27 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
28 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

23. The telephone number that Defendant, or their agent texted was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming texts pursuant to 47 U.S.C. § 227 (b)(1).

24. These text messages constituted texts that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

25. Plaintiff was never a customer of Defendant and never provided his cellular telephone number Defendant for any reason whatsoever. Accordingly, Defendant and their agents never received Plaintiffs prior express consent to receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

26. These text messages by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).

CLASS ALLEGATIONS

27. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

30. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

31. Plaintiff and the ATDS Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

32. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

33. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

34. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

35. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

3
4 **FIRST CAUSE OF ACTION**

5 **Negligent Violations of the Telephone Consumer Protection Act**

6 **47 U.S.C. §227(b)**

- 7 • As a result of Defendant's negligent violations of *47 U.S.C.*
8 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and
9 request \$500 in statutory damages, for each and every violation,
10 pursuant to *47 U.S.C. 227(b)(3)(B)*.
11 • Any and all other relief that the Court deems just and proper.
12

13 **SECOND CAUSE OF ACTION**

14 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
15 **Act**

16 **47 U.S.C. §227(b)**

- 17 • As a result of Defendant's willful and/or knowing violations of *47*
18 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are
19 entitled to and request treble damages, as provided by statute, up to
20 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
21 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
22 • Any and all other relief that the Court deems just and proper.
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JURY DEMAND

36. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 26th Day of March, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff